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In the

Supreme Court of the United States

OCTOBER TERM, 1956

No. [redacted] 115

MARK F. HELLER, *Petitioner*

vs.

STATE OF CONNECTICUT

On Petition For A Writ Of Certiorari To The Supreme Court Of The State Of Connecticut

RESPONDENT'S BRIEF IN OPPOSITION

MILTON A. FEINMAN,
Prosecuting Attorney,
Stoddard Memorial Bldg.,
Miller Street,
Meriden, Connecticut,
Attorney for Respondent.

THE MADE CO., MERIDEN, CONN.

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OCTOBER TERM, 1966

No. 1338

MARK F. HELLER, *Petitioner*

vs.

STATE OF CONNECTICUT

On Petition For A Writ Of Certiorari To The Supreme Court Of The State Of Connecticut

RESPONDENT'S BRIEF IN OPPOSITION

1. There Is No Conflict With The Decisions Of This Court.

The question presented is whether Petitioner was deprived of his right to counsel under the Sixth Amendment to the Constitution (Pet. 3) as applied to the states through the due process clause of the Fourteenth Amendment. (Pet. 2)

Following his arrest, the Petitioner answered no questions and made no statement to the police, but he remained silent. After his request to call a lawyer, questioning ceased and no statement by Petitioner was obtained from him or offered in trial. (Pet. A-7)

Petitioner claims the decision below is in conflict with the *Escobedo* and *Miranda* decisions. (Pet. 8 and 6) The majority decision in *Miranda* in explaining *Escobedo* clearly states that the constitutional issue in each of the cases pertained to the admissibility of self-incriminating statements obtained from a defendant questioned while in custody. (Pet. A-10-11) The Petitioner was *not* convicted by his own statement, confession or admission, because none was offered or admitted on trial. (Pet. A-11) Furthermore, this case was tried on December 10, 1964 (R. 1) which was prior to June 13, 1966, and is not controlled by *Miranda* according to the *Johnson* case. Petitioner was convicted solely upon the testimony of the police officer as to his observations of the Petitioner. (R. 7)

Petitioner was not denied his rights under the Sixth Amendment (Pet. 3) to have the assistance of counsel and compulsory process for obtaining witnesses in his favor, since at the trial he was represented by counsel and produced a witness who had been with him prior to his arrest to corroborate his own testimony. (Pet. 3)

The right to counsel under the Sixth Amendment while an accused is in police custody has not been extended to situations going beyond testimonial statements by an accused as is shown in the *Schmerber* case. Petitioner's argument is purely speculative as to what evidence he might have been able to produce if his lawyer had been called and if his lawyer had come to the station and assumes that Petitioner would have been awake when, in fact, he was asleep. (Pet. A-7)

CONCLUSION

Accordingly, it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,
MILTON A. FISHMAN,
Attorney for Respondent.

AFFIDAVIT

I, Milton A. Fishman, Prosecuting Attorney, Circuit Court of Connecticut, Seventh Circuit, Attorney for the respondent State of Connecticut, hereby certify that a copy of the foregoing Brief in Opposition has been mailed depositing same in the United States Post Office, registered mail, postage prepaid to Attorney David M. Reilly, Jr., 205 Church Street, New Haven, Connecticut.

MILTON A. FISHMAN

Subscribed and sworn to before me this 27th day of June, 1967.

DENNIS F. GAFFNEY,
Commissioner of the Superior Court.